

Application No.: 10/761,101  
Response dated: February 23, 2009  
Reply to Office Action: January 30, 2009

### REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 7, 8, 9, 10, 12, 15, 17, 20, and 21 have been amended, relative to the original patent U.S. Patent No. 6,274,684 (US-684). Claims 2-6, 11, 13, 14, 16, 18, and 22-48 have been cancelled.

New Claim 49 has been added.

Claims 1, 7-10, 12, 15, 17, 19-21, and 49 remain.

No new matter has been added.

Applicants wish to thank Examiner for removal of the previous rejections based on §112, and based on §102 regarding Sugimura and Imuta.

### **Notice of Non-Compliant Amendment 37 CFR 1.121**

The Response submitted 16-Dec-2008 has been objected to as being a Non-Compliant Amendment under 37 CFR 1.121. According to 37 CFR 1.173(g), *Amendments made relative to the patent*: “[a]ll amendments must be made relative to the patent specification, including the claims, and drawings, which are in effect as of the date of filing of the reissue application.”

Applicants respectfully direct the Action’s attention to the first paragraph on Page 7 of the Response submitted 16-Dec-2008, wherein Applicants disclose:

### **“LISTING OF CLAIMS**

The following amendments to the claims include amendments previously presented, and are again submitted as set forth in 37 CFR 1.173(g) to be relative to the patent, and are not submitted relative to any prior amended version of the claims.”

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Although Claim 49 was previously added, Claim 49 is "New" in relation to the original patent. In the Response submitted 16-Dec-2008 Applicants have labeled Claim 49 as "New" in conformity with 37 CFR 1.173(g). Accordingly, Applicants have submitted a compliant amendment consistent with 37 CFR 1.173. Removal of the objection to the Response submitted 16-Dec-2008 is respectfully requested.

#### Double Patenting

Claims 1, 7-10, 12, 15, 17, 19-21, and 49 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-38 of U.S. Patent No. 6,271,325 to McConville (hereinafter "McConville") in view of U.S. Patent No. 4,530,914 to Ewen et al. (hereinafter "Ewen".) Upon indication of allowable subject matter in the present case, a Terminal Disclaimer will be filed as appropriate.

#### Claim Rejections Under 35 U.S.C. § 103

Claims 1, 7-10, 12, 15, 17, 19-21, and 49 have been rejected under 35 U.S.C. §103(a) as being unpatentable over McConville in view of Ewen.

Applicants recite, *inter-alia*, "a process for polymerizing olefin(s) comprising, combining said olefin(s), a catalyst composition having a first catalyst component comprising a Group 15 containing tridentate ligated Group 3 to 7 metal compound wherein the Group 3 to 7 metal atom is bound to at least one leaving group and to three Group 15 atoms, and wherein two of the Group 15 atoms are each bound to the third Group 15 atom through a bridging group; and a second catalyst component, wherein said second catalyst component is a metallocene compound;...wherein the polymerization process is a continuous gas or slurry phase process..."

McConville is generally directed to a composition of matter and a polymerization process comprising combining an olefin in the gas or slurry phase with an activator, a support and a compound having the same general formula as recited in the presently claimed invention. However, McConville fails to disclose or suggest combining the

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Group 15 containing catalyst compound with Applicants' recited metallocene catalyst compound. McConville also fails to disclose or suggest a continuous process.

Ewen is generally directed to polyolefins having a broad molecular weight distribution obtained by polymerizing ethylene or higher alpha olefins in the presence of a catalyst system comprising two or more metallocenes each having different propagation and termination rate constants and alumoxane. Ewen fails to disclose or suggest Applicants' recited Group 15 catalyst compound or in fact, a process which combines any non-metallocene catalyst with a metallocene catalyst. In addition, Ewen fails to disclose or suggest Applicants' recited continuous process. Accordingly, Ewen fails to cure the defects in McConville. Since the cited prior art fails to disclose or suggest all the limitations recited by Applicants' in the currently claimed invention, McConville alone and/or in combination with Ewen cannot reasonably be found to render the instant claims obvious. Removal of the rejection is respectfully requested.

Claims 1, 7-10, 12, 15, 17, 19-21, and 49 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,294,495 to Matsunaga (hereinafter "Matsunaga") in view of Ewen.

Matsunaga is generally directed to an activated tridentate mono-anionic-ligand-based transition metal catalyst in a reduced oxidation state for olefin polymerization. Matsunaga fails to disclose or suggest Applicants' recited process comprising a Group 15 containing catalyst compound; much less such a catalyst in combination with a metallocene catalyst. Matsunaga further fails to disclose or suggest Applicants' recited continuous process. Matsunaga thus fails to disclose or suggest all of Applicants' recited limitations. For the reasons discussed above, Ewen fails to cure the defects in Matsunaga. Accordingly, Matsunaga in view of Ewen cannot reasonably be found to render the instant claims obvious. Removal of the rejection is respectfully requested.

Applicants respectfully request that all rejections be withdrawn and solicit a prompt notice of allowability. In the alternative, Applicants invite the Office to

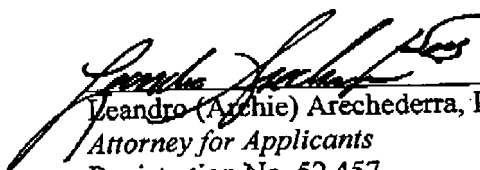
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telephone the undersigned attorney if there are any other issues outstanding which have not been presented to the Office's satisfaction.

Respectfully submitted,

February 23, 2009

Date

  
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